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Report of the Working Group on the Universal Periodic Review*

Montenegro

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. In this document, Montenegro presents its views on recommendations from the third UPR cycle. The document is the result of the joint work of Government institutions, representatives of judiciary and prosecution service, the Protector and NGOs.

2. During interactive dialogue on 22 January 2018, Montenegro received 169 recommendations. In the framework of the adopted Working Group's Draft Report, Montenegro accepted 151 recommendations (104.1–104.7; 105.1–105.144), of which 144 were accepted as recommendations which were either in the process of implementation or had been already implemented. Montenegro noted 3 recommendations (107.1, 107.2, 107.3), whereas 15 recommendations were left for further consideration (106.1–106.15).

3. In that regard, Montenegro herewith gives the following comments.

I The following recommendations do not enjoy support of Montenegro: 106.1–106.3, 106.7–106.8, 106.14–106.15.

4. Reasons for such position are as follows:

106.1; 106.2 – Montenegro maintains the position taken during the second UPR cycle (Addendum A/HRC/23/12/Add.1). Recently adopted Law on Foreigners strengthened legal framework for protecting rights of migrants legally residing in Montenegro. Therefore, the ICRMW ratification is unnecessary.

106.3 – Montenegro is fully committed to improving the situation of persons with disabilities. Besides amending the legislation on copyrights and related rights, accession to the Marrakesh Agreement would imply strengthened human and financial resources for its full implementation. In order to take responsible approach and fulfil obligations arising from potential accession to the Agreement, possibilities of its ratification are carefully being considered and consultations are held at national and international levels. Having in mind aforementioned and the fact that Montenegro as an EU candidate country harmonises its national legislation with EU standards, the recommendation is not acceptable at the moment.

106.7 – Criminal offence of torture is defined in the Criminal Code (CC), in the part which regulates criminal offences against rights and freedoms of humans and citizens. The basic form of the criminal offence is prescribed in paragraph 1 which reads that anyone who inflicts severe pain or heavy suffering, whether bodily or mental, to the other person in order to obtain from him or from a third part a confession or other information or in order to unlawfully punish or intimidate him, or to exert pressure over him or intimidate or exert pressure over a third party, or does so for other reasons based on discrimination shall be punished by a prison term from six months to five years. Paragraph 2 prescribes a qualified form of the criminal offence of torture by setting out that where this criminal offence is committed by a public official while acting in his official capacity, or where the offence was committed under his explicit or implied consent, or where a public official incited another person to commit the offence, he shall be punished by a prison term from one to eight years.

Incrimination of the criminal offence of torture is harmonised with CAT and European Convention on the prevention of Torture, and Inhuman or Degrading Treatment or Punishments. Analysis of definition of torture contained in other relevant international conventions and of the criminal offence set out by the CC leads to the conclusion that the perpetrator who commits criminal offence of torture may be any other person, besides the person in official capacity, and that this is a qualified form of a criminal offence if such criminal offence has been committed by the public official while acting in its official capacity. Through such incrimination, Montenegrin legislation expands the notion of torture by prescribing that the perpetrator of the basic form may be any person, because practice shows that torture may also be inflicted by members of criminal and other organisations, which is also confirmed by case law of the European Court of Human Rights.

Definition of torture contained in the CC is fully harmonised with the definition of torture set out in Article 1 of the CAT. Therefore, the recommendation is not acceptable.

106.8 – The intention of the Government is to embark on performing analysis of the range of penalties and non-applicability of statutory limitations to criminal offences in the CC, which will show in a methodologically detailed manner whether and in what part there is a discrepancy of the range of prescribed penalties and non-applicability of statutory limitations to criminal offences in the CC in respect of individual criminal offences, taking into account comparative experiences, experiences of EU Member States and relevant international documents on torture. Based on the results of analysis, the Government will engage in systemic harmonisation of the range of penalties and in resolving the issue of non-applicability of statutory limitations to certain criminal offences, including criminal offence of torture, which would properly and thoroughly regulate this matter. Therefore, the recommendation is not acceptable.

106.14 – The issue of accessibility is regulated in detail in the existing strategies for integration of persons with disabilities and their protection against discrimination, including relevant action plans. Action plans define the obligation to develop accessibility standards and improve and expand the existing legislation on accessibility, as well as to continuously adapt and reconstruct physical environment, means of transport, transport infrastructure, information and communication technologies, public facilities and services bearing in mind universal design concept. Therefore, it is not necessary to develop a separate accessibility strategy.

106.15 – Formulation of the recommendation on "thousands of stateless persons in the country" is not acceptable because it does not reflect factual condition, according to the results of the last public call for these individuals. The Law on Citizenship does not leave the possibility for individuals born in Montenegro to become stateless. In order to raise awareness about the importance of obtaining personal identification documents, activities will be continued to highlight importance of giving birth within the health system, obligation to register children in the registries of Montenegro or their country of origin, and support and assistance programmes in Montenegro for these individuals. Measures have been taken to establish records of individuals living in Montenegro, but not holding citizenship of any country, while assistance is provided to them primarily in RE settlements.

II Subsequently considered recommendations which enjoy full support of Montenegro and will be implemented

106.4–106.6, 106.9–106.13.

III In respect of all accepted recommendations, Montenegro herewith gives the following comments

A. International legal instruments, cooperation with human rights mechanisms and institutional framework for human rights protection

5. Montenegro will continuously work on efficient implementation of the rounded up legal and institutional framework and provision of funding for functioning of the Protector's Office. Focus will be on new recruitments, training and education, with particular emphasis on anti-discrimination and prevention of torture.

6. Implementation of measures and activities will continue to ensure efficiency of institutional framework and full implementation of ratified international instruments and national legislation. Activities will be undertaken to establish a NMRF, and an open, merit-based process for selecting candidates for human rights treaty bodies' elections.

B. Anti-discrimination

7. Priority will be given to full implementation of the strategies whose action plans set out key measures and define budgetary funding for their implementation in the area of eliminating all forms of discrimination and improving human and minority rights and freedoms. Focus will be placed on activities related to fighting discrimination against all ethnic minorities and marginalised groups in order to fully integrate them in all segments of the society.

8. The Strategy for Minority Policy 2018-2023 and Strategy for Improving the Quality of Life of LGBTI Persons 2019-2023 will be adopted soon, along with the law that will regulate same-sex partnership.

9. Activities will be undertaken to adopt the law on gender identity which will enable sex reassignment. Legal system of Montenegro does not contain any legal provisions requiring transgender people to undergo surgical intervention in order to acquire certain civil status. In accordance with the Rulebook on medical criteria for sex reassignment, the statutory rules do not have impact on determination of gender identity, nor can sex reassignment constitute a requirement for gender identity.

C. Fight against torture

10. Montenegro will continue to eliminate torture and strengthen efficient application of ratified international instruments. Training courses are continuously provided to law enforcement officials. Activities are undertaken to improve prison facilities conditions, while adopted strategic documents define activities aimed at improving the conditions of stay of persons deprived of liberty. Health care for prisoners is provided within prison units and in all public health care institutions.

11. In the coming period, challenges will be addressed in terms of protecting persons deprived of liberty against conduct of the police and ensuring that investigations are carried out regarding allegations of torture and cruel treatment of these persons by police officers.

12. The four-year plan and the annual plan of visits to the bodies and facilities by the Protector's Office, which also acts as NPM, have been adopted and its visibility has been improved. The NPM team expanded its activities to thematic visits as well.

D. Judiciary reform and fight against corruption

13. In order to strengthen independence and impartiality of judiciary, focus will be placed on further implementation of improved legal framework and continuous training in judiciary and prosecution service. Implementation of the mentioned framework guarantees impartiality of Judicial Council and application of the provisions on disciplinary responsibility harmonised with international standards.

14. Fight against corruption remains one of the Government's main strategic priorities. Anti-corruption legal and institutional framework has been rounded up, and its efficient implementation will ensure fight against corruption in public and private sectors, and fight against organised crime and high level corruption.

E. Freedom of expression, freedom of media

15. Montenegro works intensively on strengthening legal framework in order to ensure unhindered enjoyment of freedom of expression and freedom of press guaranteed under the Constitution. Proposal for the Law on Media, planned to be drafted by the end of 2018, will address the issue of providing equal opportunities for all media to access Government funding, whereas Proposal for the Law amending the Law on National Public Broadcaster RTCG is also planned to be adopted in order to strengthen mechanism for political-institutional independence of public broadcasting. Moreover, the Law on Electronic Media will be amended in order to strengthen independence of electronic media regulator.

16. Montenegro strongly condemns all attacks on journalists and their property. In order to resolve all cases involving violence against journalists, the competent state bodies will intensify their work on identification of perpetrators of such acts, while it will also conduct efficient, effective and impartial investigations to ensure full freedom of expression and prevention of impunity. Montenegrin courts act efficiently, impartially and independently in all cases involving threats, attacks and violence against journalists, by applying national legislation and international legal standards. These cases are a priority in the work of the prosecution service. In the coming period, focus will be placed on implementation of adequate penal policy for criminal perpetrators.

F. Fight against human trafficking

17. Activities contained in recommendations are implemented continuously by competent state bodies. Proper legal and institutional mechanisms for efficient fight against human trafficking have been put in place. The Government systematically monitors and encourages realization of strategic goals in the following areas: prevention and education; identification of victims of human trafficking; assistance to, protection and reintegration of victims; efficient criminal prosecution; regional and international cooperation; coordination and partnership. Professional capacities have been strengthened. Preventive and educational activities are undertaken to raise awareness among children and RE population. New strategy for combating human trafficking will be adopted, based on the analysis of previous results.

18. Activities are implemented to intensify regional cooperation through signing bilateral protocols with neighbouring countries regarding prevention, joint identification of (potential) human trafficking victims and criminal prosecution of perpetrators.

G. Fight against domestic violence, violence against women and children

19. Activities will be undertaken for the purpose of effective implementation of laws, strategies and action plans in this area.

20. The national plans for improving general support services and for improving specialised support services for the victims of violence will be drafted in accordance with Istanbul Convention. Crisis centres and shelters for victims of domestic violence will be opened. The Protocol on Actions, Prevention and Protection against Domestic Violence is currently being amended. Staff at the institutions are continuously educated, while awareness raising campaign are being conducted. The functioning of domestic violence victims' database will be defined.

21. Operating Team for combating domestic violence and violence against women was established and it will develop mechanisms for timely and proper reaction in cases of violence. Misdemeanour cases are handled urgently in order to protect victims of domestic violence. Sufficient resources have been provided to the basic courts to enable efficient provision of legal aid. All the courts have been given guidelines for future development of the Services for Assistance to Victims and Witnesses.

H. Gender equality

22. Recommendations received are aligned with areas defined in gender quality national policy. Activities are undertaken to implement the third Plan of Action for achieving gender equality, including political and economic empowerment of women, health care, education, elimination of multiple discrimination and protection against all forms of violence. Electoral legislation will be amended to enable representation of 40% of women in legislative branch, which will contribute to strengthening public policies on improving women's position in all areas with a gender misbalance. A strong emphasis will be placed on selective abortions prevention through regular control measures and supervision of the work of public and private health care institutions.

I. Rights of the Child

23. Focus will be placed on efficient implementation of strengthened legal and strategic framework. The new National Plan for Children 2018-2020 is to be adopted by the end of 2018, and the Strategy for Foster Care Development 2018-2022 will be drafted as well. Activities are undertaken to strengthen the role of the Council for the Rights of the Child and of social services regarding their work with children and families. The Strategy for Prevention and Protection of Children against Domestic Violence 2017-2021 will be implemented. Campaigns and educational activities will continue to raise awareness about protection of children against domestic violence, corporal punishment and prevention of early marriages, particularly among Roma population. A comprehensive database for child care is being prepared.

J. Minorities and Roma

24. Montenegro will continuously work on improving situation of minorities and other minority national communities, particularly of Roma and Egyptians. Institutional support to exercising minorities rights and freedoms, preservation and protection of national, cultural, linguistic and religious identity as well as capacity building of national councils of minorities and other minority national communities will be strengthen.

25. Montenegro will continue to implement activities regarding full implementation of the Strategy for Social Inclusion of Roma and Egyptians 2016-2020 and provide adequate budgetary funding for its implementation. Focus of activities will be placed on access of RE population to education, labour market, health care services and housing. The principles of integration, fairness, quality, continuity of education and improvement of school and social achievements will stay in focus.

K. Persons with disabilities

26. Measures for improving situation of persons with disabilities in all life segments will be implemented – regarding accessibility, participation, employment, education, social and health care. Professional capacities for working with persons with disabilities are continuously strengthened. According to the results of Analysis of conformity of Montenegrin legislation with the Law on the Prohibition of Discrimination of Persons with Disabilities and CRPD, seven laws have been amended so far.

27. General goal of the future Inclusive Education Strategy (2019–2025) is to enable availability and equality of education for all children and continuity and quality of inclusive education from the moment of detecting any obstacle/difficulty in development, with an aim to ensure full and effective participation in society.

L. Refugees, displaced and IDPs

28. The existing strategic and legal framework will be implemented in order to permanently resolve issues of refugees, displaced and IDPs. Permanent resolution of their legal status has become possible due to recognition of the right to habitual or temporary residence in accordance with the Law on Foreigners, whereas housing issues are addressed through the Regional Housing Programme.

M. Reduction of statelessness

29. In accordance with the new Law on Foreigners, the mechanism for establishing statelessness will be established and activities will be undertaken to recognize status of stateless persons, in order to enjoy their rights in accordance with ratified conventions.